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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

W. P. NO. 1523 OF 2005

PETITIONER

Bhajan Gaba, S/o Shri Surjit Gaba, aged about 37 years, Occupation–Business in Sale & Purchase of Cattle, R/o Near Itwari Bazar, Daru Bhatti Road, Korba, Tahl & Dist Korba (CG)

P.R. No. 1589/05
Presented by Shri Anand Verma
dated 12.8.05

VERSUS

RESPONDENTS

1. State of Chhattisgarh through Secretary, Department of Agriculture, Mantralaya, Dau Kalyan Singh Bhawan, Raipur

2. National Dairy Development Board, Project Cell, Raipur, C/o Raipur Dugdha Sangh Sahakari Maryadit, Shop No.2, Abhyuday Parisar, Nagar Ghadi Chowk, Raipur through its Project Director, Raipur (CG)

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3. Project Director Project Cell, N D D B, C/o Raipur Dugdha Sangh Sahakari Maryadit, Shop No. 2, Abhyuday Parisar, Nagar Ghadi Chowk, Raipur, Tahsil & District Raipur (Chhattisgarh)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.1523 of 2005

Bhajan Gaba

-Versus-

State of Chhattisgarh & others

POST FOR ORDER ON 22ND AUGUST, 2005

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.1523 of 2005

Bhajan Gaba

-Versus-

State of Chhattisgarh & others

Present:

Shri Manindra Shrivastava, Senior Advocate with Shri Amrito Das Advocate:	For the petitioner.
Shri Y. S. Thakur, Govt. Advocate:	For respondent No.1.
Shri P.S. Koshy, Advocate:	For respondents No.2 & 3.

O R D E R

(Passed on 22ND August, 2005)

L.C. BHADOO, J.

1. By this writ petition under Article 226/227 of the Constitution of India the petitioner calls in question the decision of respondents No.2 and 3 whereby tender submitted by the petitioner was not considered on the ground that the same was not submitted within the stipulated time i.e. by 2 pm on 4-4-2005.

2. Brief facts necessary for disposal of the writ petition are that respondent No.3 issued notice inviting tender on 5-3-2005, which was published in Dainik Bhaskar on 10-3-2005, for supply of milch animals in number 10,000 of different indigenous breeds of milch cattle viz. Gir, Tharparkar, Kankrej, Rathi, Sahiwal, Ongole, Haryana etc.. It was also made clear in the said notice that the tender documents can be obtained from the office of the Project Director on payment of Rs.500/- up to 1 pm of 4-4-2005 on any working day during office hours. The tender documents were to be submitted duly filled in and completed so as to reach to the office on or before 2 pm of 4th April

2005. The tenders were to be opened on the same date at 3 pm in the presence of tenderers and/or their authorized representatives.

3. The case of the petitioner is that on the fateful day he reached the respondents' office. On enquiry, it was informed that Mr. Lingam would accept the tender. Accordingly, he submitted his tender to Mr. Lingam at 1.35 pm and he asked for the receipt but the same was not given to him. A chart was prepared in which the names of tenderers were written and all of them were asked to put their signatures. The petitioner put his signature. The petitioner made an enquiry from Mr. Lingam whether any register was maintained showing receipt of tender form, time and date so that he can put his countersignature on it. The petitioner was informed that there is no such system. No tender box was also kept. The entire system of acceptance of tender was highly unusual. The petitioner found that at the place of tender some persons had gathered around and some of the tenderers were also standing in front of the office. Till 5' o clock tenders of others were opened and discussions were going on. In the meantime, the Project Director also came. The petitioner orally submitted to the Managing Director that his tender has not been opened. The petitioner resisted that he had submitted tender well in time. Immediately the project officer told him that the matter will be looked into. The petitioner prepared a representation and reached the office at about 5.30 pm, but nobody was available. On the next day also nobody was available. In the evening at about 4 pm, the petitioner was able to hand over his representation to a peon. Therefore, the petitioner's challenge is that he submitted his tender within time but the respondents deliberately did not include his tender for consideration.

4. Return has been filed on behalf of respondents No.2 and 3 in which preliminary objection has been raised that after tenders were opened on the same day and proceedings were drawn, the matter was

adjourned for the next day i.e. 5-4-2005. On that day after scrutiny of 7 tenders submitted by various parties, contract was awarded to 4 persons whose tenders were found lowest, therefore, this writ petition has become infructuous. This writ petition involves disputed questions, therefore, the same may be dismissed. It has further been mentioned that the tender process was conducted in a transparent manner. Till 2 pm on 4th April 2005 the petitioner had not submitted his tender documents and he had not participated in the tender process. The petitioner's tender could not be considered as the same was submitted at about 2.30 pm. Other tenderers objected in writing not to accept any tenders received after stipulated period. Copy of the said objection is Annexure-R-2/3. The time of receipt of the petitioner's tender i.e. 2.30 pm is mentioned in the register Annexure-R-2/1 in which receipt of tender was entered. After completion of the tender process, the Committee adjourned proceeding for 5-4-2005 on which date the lowest quoted rates were made known to the participating bidder and it was also suggested to all the bidders as to whoever are agreeable for the lowest offered rates would be considered for awarding of the said contract. In the process, all the three participating bidders who had earlier quoted higher rates also accepted lowest rate and accordingly the tender was finalized. The allegation levelled by the petitioner has been denied and ultimately, it has been prayed that the petition be dismissed.

5. I have heard learned counsel for the parties.

6. Shri Manindra Shrivastava, learned Senior Counsel for the petitioner argued that the petitioner submitted his tender documents at 1.30 pm half a hour before the prescribed time, but no register was maintained. No signatures of the parties were being obtained. Even no fender box was kept and the whole system was irregular. The petitioner only came to know at about 4 pm when his tender was not considered. The petitioner contacted the Director but to no avail.

Then he immediately prepared a representation, but by the time the petitioner returned to the office, office was closed. On the next day nobody was available. In the evening he was able to hand over representation to a peon who was standing there. He further argued that respondents ought to have maintained a fair and transparent procedure in processing the tenders and maintaining the record of the tender process. He further argued that document Annexure-R-2/1 submitted by respondents No.2 and 3 along with return shows that even signatures of the tenderers were not obtained. When the petitioner did not submit his tender within time, why his tender was accepted at 2.30 pm. It shows that record was not properly maintained. In the ordinary course after prescribed time, tenders are not accepted.

7. On the other hand, Shri P.S. Koshy, learned counsel for respondents No.2 and 3, argued that all the tenders which were submitted up to 2 pm were considered by the committee, even tender of the petitioner was received, but on account of written representation and objection raised by other tenderers, the tender documents of the petitioner could not be considered as the same was submitted after expiry of prescribed time, which is evident from Annexure-R-2/1. He further argued that tender committee examined everything and it is evident from Annexure-R-2/2 that proceeding of opening of tender and decision was taken thereon by the committee that the tender of the petitioner was not considered as only 7 tender documents were found to be submitted up to 2 pm. There is mention in the proceeding that tender document of the petitioner was submitted after 2 pm. He also drew attention of the Court towards Xerox copy of the representation submitted by other tenderers Annexure-R-2/3 in which they mentioned that only 7 tenders were submitted up to 2 pm, therefore, only those tenders should be considered.

8. Now, coming to the question of scope of interference with an administrative action, the same has been considered by the Hon'ble Apex Court. The basic principle of judicial review to judge the validity of the administrative action, which is being followed is known as '*Wednesbury Principle*' which is expounded in **Associated Provincial Picture Houses Limited V. Wednesbury Corporation, (1948) 1 KB 223.** The Hon'ble Apex Court in the matter of **Tata Cellular V. Union of India** reported in **AIR 1999 SUPREME COURT 11** while observing that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism held that 'the judicial review is concerned not with the merits of the decision but with the manner in which the decision was made.' In para-94 of the said judgment the Hon'ble Apex Court held that:

> "(i) Illegality : This means the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.
>
> (ii) irrationality, namely, Wednesbury unreasonableness.
>
> (iii) Procedural impropriety."

9. Again, in the matter of **Apparel Export Promotion Council V. A. K. Chopra** reported in **AIR 1999 SC 625,** the Hon'ble Apex Court held that:

> "Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the administrative authority on a matter which fell

> squarely within the sphere of jurisdiction of that authority."

10. Similarly, in **Chairman and Managing Director, United Commercial Bank V. P.C. Kakkar** reported in **AIR 2003 SC 1571** on a review of various earlier decisions of the Hon'ble Apex Court and English Courts, the scope of judicial review has been succinctly summed up as follows:

> "The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

11. Further in the matter of **Dutta Associates Pvt. Ltd., Versus Indo Merchantiles Pvt. Ltd. and others** reported in **(1997) 1 Supreme Court Cases 53** the Hon'ble Apex Court held that:

> "Whatever procedure the Government proposes to follow in accepting the tender must be clearly stated in the tender notice. The consideration of the tenders received and the procedure to be followed in the matter of acceptance of a tender should be *transparent, fair and open.* While a bona fide error or error of judgment would not certainly matter, any *abuse of power for extraneous reasons* would expose the authorities concerned."

12. Thus, the position which emerges out of these decisions is that judicial review under Article 226 of the Constitution cannot be exercised as a Court of appeal. Judicial review must be confined to the examination of the decision-making process. Where an administrative action is questioned as arbitrary under Article 14 of

the Constitution, the role of the Court is confined to "Wednesbury principles". The Court has to examine whether the decision is rational or reasonable and has been arrived at after following the principles established by law and by taking into account all the relevant factors and is not manifestly unreasonable that no reasonable authority, entrusted with the power in question, could reasonably have made such a decision. The whole procedure to be followed in the matter of acceptance of a tender must be *transparent, fair* and *open.*

13. Based on the above principles, if we examine the facts of the present case, the petitioner's case is that he submitted his tender on the last date at 1.30 pm half a hour before expiry time, whereas, case of the respondents is that tender documents were submitted by the petitioner by 30 minutes late i.e. 2.30 pm, therefore, the petitioner's tender documents were not considered. In this case, the challenge of the petitioner is that copy of register Annexure-R/2-1, which has been produced, do not bear the signatures of the tenderers who submitted tenders, whereas, on the other hand, apart from this register, minutes of the proceeding of committee who scrutinized the tenders and finalized tender documents have also been produced by respondents. Copy of representation of other tenderers has also been produced. Annexure-R-2/3, which is Xerox copy of representation made by 7 tenderers, has been annexed with the return in which it has been mentioned that only 7 tenders were received in time up to 2 pm, therefore, those tenders should be considered and that representation bears signatures of 7 tenderers. This fact has not been denied by the petitioner and no rejoinder has been filed to this effect, therefore, there is no reason before this Court to discard this document. Moreover, perusal of the minutes of the proceeding regarding scrutiny of tenders and decision taken thereon by the committee shows that only 7 tenders were received in time. The petitioner's tender was received at 2.30 pm, therefore, the same was

not considered. Tenders were opened on the same day and then proceedings were deferred for the next day, and 3 parties submitted their lower rates and based on that tender documents of 4 parties were accepted, and the six members of the committee were there. The petitioner has not been able to bring on record any material upon which this Court can consider that all the members of committee were biased towards the petitioner. There is no reason as to why all the 6 members were against the petitioner.

14. Looking to the totality of the above circumstances placed on record, the point raised by the petitioner does not seem to be plausible and believable. It is true that respondents being a public authority, when they are dealing with public money and as per the various decisions of the Hon'ble Apex Court, they were required to conduct whole proceeding of tender process in a transparent, fair and open manner. They ought to have devised transparent, fair and open system for accepting, scrutiny and further processing of the tender in such a way that there should not have left any room, which makes the process doubtful in any manner. Normally, in such a situation, Government instrumentalities are required to either accept tender only through post office or courier service and then to enter the same in the register maintained for the purpose. They should also enter time of receiving. In case, tenders are permitted to be submitted in person, then the person who has submitted the tender, his signatures ought to have been obtained. The entries in such register must be signed by some Senior Officer. The other procedure which can be adopted is that to keep a sealed tender box in the office so that tenderers can drop their tenders in the sealed box and such sealed tender box must be opened in the presence of the parties so as to leave no room for any doubt. Unfortunately, in the present case, no full proof system was adopted by respondents and that gave room to the petitioner to level allegations against respondents. But, as has been mentioned

above, looking to the totality of the facts and circumstances, i.e. representation made by other tenderers, minutes of proceeding recorded by tender committee and also register Annexure-R/2-1, cumulative effect of all these documents shows that the petitioner's allegations are not established.

15. In the result, the petitioner has not been able to make out a case for judicial review in the matter by this Court by invoking extraordinary jurisdiction under Article 226/227 of the Constitution of India. The writ petition is liable to be dismissed and the same is dismissed.

Sd/-
L.C. Bhadoo
Judge

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